

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS ALLEN GORDON,

Plaintiff,

v.

JOE BARNETT, *et al*,

Defendants.

Case No. C03-5524KLS

ORDER REGARDING
PLAINTIFF'S SECOND MOTION
TO COMPEL DISCOVERY
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 45

This matter is before the court on plaintiff's filing of a motion to compel discovery (Dkt. #67). After reviewing plaintiff's motion and the remaining record, the court hereby finds and ORDERS:

In his motion, plaintiff seeks to compel the "Correctional Records Specialist" at the Washington State Penitentiary, a non-party to this action, to comply with a subpoena to produce and to permit plaintiff to inspect and copy his prison file. Plaintiff filed a substantially similar motion on February 24, 2005 (Dkt. #48), which the court denied on April 6, 2005 (Dkt. #58).

Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 45(c)(2)(B), a party may move to compel production of documents "upon notice to the person commanded to produce." In denying plaintiff's prior motion to compel, the court noted that it did not appear plaintiff had served his motion on the person commanded to produce the requested documents. Although it appears plaintiff has served his


1 current motion on the person commanded to produce the requested documents, a review of that motion
2 indicates it remains deficient in another respect.

3 Fed. R. Civ. P. 45(b)(1) requires that “[p]rior notice of any commanded production of documents
4 and things or inspection of premises before trial shall be served on each party in the manner prescribed by”
5 Fed. R. Civ. P. 5(b). Plaintiff’s motion and attached exhibits indicates that defendants were not given such
6 prior notice. Because plaintiff did not fully comply with the requirements of Fed. R. Civ. P. 45, his
7 subpoena is defective.

8 Accordingly, the court will not order the Correctional Records Specialist at the Washington State
9 Penitentiary to comply with plaintiff’s subpoena at this time. Rather, plaintiff is directed to serve the
10 subpoena on defendants by no later than July 5, 2005. In addition, plaintiff’s motion to compel discovery
11 shall be re-noted for consideration on July 30, 2005, to enable defendants to file a response, if any, to the
12 subpoena and plaintiff’s motion.

13 The clerk is directed to re-note plaintiff’s motion to compel discovery (Dkt. #67) for Friday, July
14 29, 2005. Defendants’ response, if any, shall be filed no later than Monday, July 25. Plaintiff’s reply to
15 defendants’ response, if any, shall be filed no later than Thursday, July 28. The clerk is further directed to
16 send copies of this Order to plaintiff and counsel for defendants.

17 DATED this 15th day of June, 2005.

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21 Karen L. Strombom
22 United States Magistrate Judge
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